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**New Jersey and Pennsylvania Bars

BRENDAN D. HENNESSY**
JONATHAN E. HILL**

July 30, 2021

Insinkerator, A Division of Emerson
4700 21ST Street
Racine, WI 53406

**Re: Chubb Insurance Company of New Jersey a/s/o Saul A. Scherl and Jodi B.
Scherl v. InSinkErator, et al.,
Docket No. BER-L-5059-21**

Dear Sir/Madam:

We herewith serve you a Summons and Complaint relative to the above-captioned matter. Kindly be advised that you have thirty-five (35) days in which to file an Answer or otherwise plead.

May we suggest that you immediately forward the pleading to the insurance company which provides coverage for you so that a responsive pleading can be filed on your behalf and your interests protected.

Very truly yours,
KIRMSER, LAMASTRA, CUNNINGHAM &
SKINNER



David L. Burnett

DLB:mlm
Encls.

David L. Burnett, Esq. - NJ ID No.
025671999
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Attorneys for Plaintiff Chubb Insurance
Company of New Jersey as subrogee of Saul
A. Scherl; and Jodi Scherl

CHUBB INSURANCE COMPANY OF
NEW JERSEY as subrogee of SAUL A.
SCHERL and JODI B. SCHERL,

Plaintiff(s)

v.

INSINKERATOR, A DIVISION OF
EMERSON, JOHN DOES 1-5, ABC
CORPS. 1-5

Defendant(s)

From The State of New Jersey, to:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5059-21

CIVIL ACTION

SUMMONS

INSINKERATOR, A DIVISION OF EMERSON

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P O Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages, or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.



Dated: July 30, 2021

/S/ Michelle M. Smith

MICHELLE M. SMITH
Clerk of the Superior Court

Name and Address of Defendant to be
Served:

4700 21st Street, Racine WI 53406

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Floor
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main Street
Hackensack, NJ 07601-0769
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility, 49 Rancocas
Road
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office, 1st Floor
Hall of Records, 101 South Fifth Street
Camden, New Jersey 08103
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
9 North Main Street, Box DN-209
Cape May Court House, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 463-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Streets, P O Box 615
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
50 West Market Street, Room 131
Newark, NJ 07102
LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake, First Floor, Court House
1 North Broad Street, P O Box 129
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Record Dept.
Brennan Court House - 1st Floor
583 Newark Avenue
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division, 65 Park Avenue
Flemington, NJ 08862
LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 South Broad Street, P O Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court
Administration Building, Third Floor
1 Kennedy Square, P O Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
71 Monument Park, P O Box 1262
Freehold, NJ 07728-1262
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Place, P O Box 910
Morristown, NJ 07960-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Court House
77 Hamilton Street
Passaic, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 345-7171

SALEM COUNTY:

Deputy Clerk of the Superior Court
92 Market Street, P O Box 18
Salem, NJ 08079
LAWYER REFERRAL
(856) 935-5628
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Floor
P O Box 3000
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Floor, Court House, 2 Broad
Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House, 413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 475-2010

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(908) 572-3600
Attorneys for Plaintiff Chubb Insurance
Company of New Jersey a/s/o Saul A. Scherl
and Jodi B. Scherl

CHUBB INSURANCE COMPANY OF
NEW JERSEY as subrogee of SAUL A.
SCHERL and JODI B. SCHERL,

Plaintiff,

v.

INSINKERATOR, A DIVISION OF
EMERSON, JOHN DOES 1-5, ABC
CORPS. 1-5

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: BER-L-

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff Chubb Insurance Company of New Jersey doing business in the County of Bergen, State of New Jersey, as subrogee of Saul A. Scherl and Jodi Scherl, by way of Complaint says:

FIRST COUNT

1. On or about February 2, 2018, and at all times relevant thereto, plaintiff Chubb Insurance Company of New Jersey was a corporation licensed by the State of New Jersey to issue insurance policies throughout the state. Plaintiff Chubb Insurance Company of New Jersey

transacts business in every county of the State of New Jersey and therefore sets venue pursuant to R. 4:3-2(b).

2. On or about February 2, 2018 and at all times relevant thereto, Saul and Jodi Scherl were the owners of real property located at 232 Lydecker Street, Englewood, NJ 07631.

3. On or about February 2, 2018 and at all times relevant thereto, defendant InSinkErator, a Division of Emerson (“InSinkErator”) is an American company organized and existing under and by virtue of the laws of the State of New Jersey.

4. On or about February 2, 2018 and at all times relevant thereto, defendants JOHN DOES 1-5 and ABC CORPS. 1-5 were individuals and/or entities organized and existing under and by virtue of the laws of the State of New Jersey.

5. On or about February 2, 2018, the Saul and Jodi Scherl were insured by plaintiff Chubb Insurance Company of New Jersey, under policy of insurance covering the residence at 232 Lydecker Street, Englewood, NJ 07631, which policy provided coverage for the significant damage caused thereto by the negligence of the defendants.

6. Pursuant to the aforementioned policy of insurance, Chubb Insurance Company of New Jersey paid a claim to Saul and Jodi Scherl, which amount represents the fair and reasonable value of the damaged property which was covered by insurance.

7. By agreement between Chubb Insurance Company of New Jersey and Saul and Jodi Scherl, and by operation of law, the rights to pursue recovery of the above-described damages covered by insurance from any party responsible for causing them were transferred from Saul and Jodi Scherl to Chubb Insurance Company of New Jersey.

WHEREFORE, plaintiff demands judgment against defendants INSINKERATOR, JOHN DOES 1-5 and ABC CORPS. 1-5 for damages in the amount of \$94,690.31 plus

prejudgment interest, costs of suit, reasonable attorney's fees and such other relief the Court may deem appropriate.

SECOND COUNT

1. The plaintiff repeats and re-alleges each and every paragraph of the First Count and sets them forth herein as if stated at length.

2. On or about February 2, 2018 and at all times relevant thereto, InSinkErator is an American company known for producing garbage disposals and placing them into the stream of commerce.

3. On a date prior to February 2, 2018 and at all times relevant thereto, the InSinkErator Evolution Pro garbage disposal was installed in the pool house of Saul and Jodi Scherl in a manner reasonably foreseeable to the defendant.

4. The InSinkErator Evolution Pro garbage disposal manufactured and/or designed by defendant InSinkErator, was defective in manufacture and/or design, said defect being in existence at the time the product was placed into the stream of commerce by defendant.

5. On or about February 2, 2018, while the above-described InSinkErator Evolution Pro garbage disposal was being used in a manner reasonably foreseeable to the manufacturer/seller/designer, the product failed, thereby causing considerable damage to the real and personal property of Saul and Jodi Scherl.

6. The damage was a direct and proximate result of a defect in design and/or manufacture of the InSinkErator.

7. Pursuant to N.J.S.A. 2A:58C-1 et seq., defendant, InSinkErator, is strictly liable for all damages incurring as a result of the above-described defect in the InSinkErator Evolution Pro garbage disposal.

WHEREFORE, plaintiff demands judgment against defendant InSinkErator for damages in the amount of \$94,690.31 plus prejudgment interest, costs of suit, reasonable attorney's fees and such other relief the Court may deem appropriate.

THIRD COUNT

1. The plaintiff repeats and re-alleges each and every paragraph of the First and Second Counts and sets them forth herein as if stated at length.

2. InSinkErator, John Does 1-5 and/or ABC Corps. 1-5 expressly warranted that the InSinkErator Evolution Pro would be reasonably suitable, safe and fit for use with a garbage disposal.

3. Furthermore, by placing the InSinkErator Evolution Pro into the stream of commerce without any warnings, limitations, or warranties regarding its structural integrity, InSinkErator, John Does 1-5 and/or ABC Corps. 1-5 impliedly warranted that the garbage disposal was of fair average quality, was fit for the ordinary purpose for which garbage disposals are used, and conformed to the promises or affirmations of fact made on the garbage disposal labeling.

4. The failure of the garbage disposal at the property is a breach of the express warranty and/or implied warranties of merchantability and fitness for a particular purpose on the part of InSinkErator, John Does 1-5 and/or ABC Corps. 1-5.

5. As a direct and proximate result of the aforesaid breach of express and implied warranties of InSinkErator, John Does 1-5 and/or ABC Corps. 1-5, Chubb Insurance Company of New Jersey as subrogee of Saul and Jodi Scherl, has been damaged in the amount of \$94,690.31, which is the amount it has paid for the repair and clean-up costs and other related expenses for the damage to the property that was incurred as a result of the water leaking from

the InSinkErator Evolution Pro designed, manufactured, distributed, packaged, labeled, maintained, and/or serviced by InSinkErator, John Does 1-5 and/or ABC Corps. 1-5.

WHEREFORE, plaintiff demands judgment against defendants InSinkErator, John Does 1-5 and ABC Corps. 1-5, as follows:

- a. Compensatory damages;
- b. Reasonable attorneys' fees, costs of suit and interest; and
- c. Such other further relief as this Court deems just and proper.

FOURTH COUNT

1. The plaintiff repeats and re-alleges each and every paragraph of the First, Second and Third Counts and sets them forth herein as if stated at length.

2. InSinkErator, John Does 1-5 and/or ABC Corps. 1-5 expressly warranted that the garbage disposal would be reasonably suitable, safe and fit for use with the InSinkErator Evolution Pro garbage disposal manufactured by InSinkErator.

3. The InSinkErator Evolution Pro manufactured by InSinkErator falls within the purview of New Jersey's Uniform Commercial Code.

4. InSinkErator expressly warranted that the product would be reasonably suitable, safe and fit for use.

5. The failure of the product is a breach of the express warranties and/or the implied warranties under New Jersey's Uniform Commercial Code.

6. As a direct and proximate result of the aforesaid breach of express and implied warranties of InSinkErator, John Does 1-5 and/or ABC Corps. 1-5, Chubb Insurance Company of New Jersey as subrogee of Saul and Jodi Scherl, has been damaged in the amount of \$94,690.31, which is the amount it has paid for the repair and clean-up costs and other related

expenses for the damage to the property that was incurred as a result of the water leaking from the InSinkErator Evolution Pro designed, manufactured, distributed, packaged, labeled, maintained, and/or serviced by InSinkErator, John Does 1-5 and/or ABC Corps. 1-5.

WHEREFORE, plaintiff demands judgment against defendants InSinkErator, John Does 1-5 and ABC Corps. 1-5, as follows:

- d. Compensatory damages;
- e. Reasonable attorneys' fees, costs of suit and interest; and
 - a. Such other further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of six (6) persons on all issues involved herein.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the plaintiff designate David L. Burnett, Esq. as trial counsel.

CERTIFICATION PURSUANT TO R. 4:5-1(b)

Plaintiff certifies that the matter in controversy is not currently the subject of any other action currently pending in the Superior Court of New Jersey or any other Court. There are currently no pending arbitration proceeding and none are contemplated at this time. Plaintiff further certifies that all parties known to plaintiff at this time who should be joined in this action are made a part hereof.

KIRMSER, LAMASTRA, CUNNINGHAM
& SKINNER
Attorneys for Plaintiff



By: _____
David L. Burnett

Dated: July 30, 2021

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005059-21

Case Caption: CHUBB INSURANCE COMP ANY OF VS
INSINKERATOR, A D

Case Initiation Date: 07/30/2021

Attorney Name: DAVID LAWRENCE BURNETT

Firm Name: CHUBB

Address: KIRMSER LAMASTRA CUNNINGHAM & SKINNE
202A HALLS MILL RD
WHITE HOUSE STA NJ 08889

Phone: 9085723600

Name of Party: PLAINTIFF : Chubb Insurance Company of

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: TORT-OTHER

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: Chubb Insurance Company of? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

07/30/2021
Dated

/s/ DAVID LAWRENCE BURNETT
Signed

